

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-9 and 12 are presently pending in the present application. Claim 1 has been amended by way of the present Amendment. No new matter is introduced by this amendment. (See, e.g., page 7, line 28, through page 11, line 16; page 14, lines 28-32; page 15, lines 9-12, of the English translation; and FIGS. 3-5.)

In the Office Action, claim 1 was objected to for a minor informality; claim 1 was rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement; claims 1-9 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Birsan et al.* (U.S. Patent No. 6,848,078) in view of *Tuma et al.* (A Hands-on Approach to Teaching Basic OSI Reference Model).

Regarding the objection to claim 1, the Applicants note that claim 1 has been amended to change “the selected part of the end-system message” to “the selected structural unit of the end-system message,” which has antecedent basis earlier in the claim. Accordingly, the Applicants request the withdrawal of the objection to claim 1.

Regarding the rejection of claim 1 under 35 U.S.C. §112, first paragraph, the Applicants note that claim 1 has been amended to recite “displaying both structural units of the reference message and structural units of the generated end-system message, selecting a displayed structural unit of the reference message, selecting a displayed structural unit of the end-system message....” The original specification provides clear written description support for the language in claim 1. (See, e.g., page 10, line 4, through page 11, line 16.) Accordingly, the

Applicants respectfully request the withdrawal of the rejection of claim 1 under 35 U.S.C. §112, first paragraph.

Regarding the rejection under 35 U.S.C. §103(a), the Applicants respectfully request the withdrawal of the obviousness rejection for the reasons set forth below.

MPEP §2141 notes that the Patent Office bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. MPEP §2142 further notes that “[t]o reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences,” conduct the search and evaluate the “subject matter as a whole” of the invention. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”

The Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness, since there is no evidentiary support for the conclusion that the features recited in the claims were known at the time of the present invention. Accordingly, the Applicants request that such evidentiary support be placed on the record, or the obviousness rejection withdrawn.

Independent claim 1 recites a method for determining deviations of a part of an end-system message of modular structure generated in a hierarchically-structured end system of a telecommunications device structured and based on an OSI reference model by comparison with a reference message comprising the steps of: reading in a reference message, reading in an end-system message containing information of different layers according to the OSI reference model

generated in the end system, performing a message-structure analysis of the reference message, performing a message-structure analysis of the generated end-system message, displaying both structural units of the reference message and structural units of the generated end-system message, **selecting a displayed structural unit of the reference message, selecting a displayed structural unit of the end-system message, determining deviations of the selected structural unit of the end-system message by comparison with the selected structural unit of the reference message, after the respective selections of the respective structural units**, based on a structure and values for parameters of structural units, and **outputting of individual structural units of the selected structural unit of the end-system message deviating from the selected structural unit of the reference message** indicating values of parameters of the respective individual structural units of the selected structural unit of the end-system message generated in the end system. The Applicants submit that the applied references fail to disclose or suggest all of the recited limitations in claim 1.

At the outset, the Applicants note that claim 1 has been amended to clarify that the method is a method for determining deviations of **a part of** an end-system message (see page 10, line 4, through page 11, line 16). Also, instead of claiming that the whole message is displayed, it is merely claimed that the structural units of the respective messages are displayed (see FIGS. 3 and 4; and page 7, line 28, through page 10, line 24 with emphasis on page 10, lines 8-13). The phrase “arbitrary structural unit” has been replaced by “displayed structural unit” (see page 8, lines 18-25; page 10, lines 4-13; page 11, lines 5-16; and note that “7.0” is a part of “7” and that “17” is a part of “16” in view of page 8, line 18, through page 9, line 7, and page 10, lines 8-13). Further, it is stressed that the determination of the deviations is carried out **after** the respective selections of the respective structural units (see page 10, line 32, through page 11, line 16).

Finally, for the sake of clarity, the outputting step has been slightly amended to clarify that the selected structural units contain individual structural units (see FIG. 5; page 11, line 11; page 14, lines 28-32; page 15, lines 9-12).

The Applicants note that the Office Action acknowledges that *Birsan et al.* does not disclose a device that is structured and based on an OSI reference model, a message that contains information of different layers according to the OSI reference model, a method that includes selecting an arbitrary structural unit of a reference message, or a method that includes selecting an arbitrary structural unit of an end-system message. The Office Action cites *Tuma et al.* in order to supplement the deficiencies in *Birsan et al.*

Birsan et al. describes a software tool that allows a user to compare a base file containing XML statements to a modified file, and from the comparison to create a third file. The comparison between the base file and modified file results in a comparison tree that contains, as nodes, all of the information in the base file as well as the differences located in the modified file. A user can then traverse the third data structure and select nodes of interest to create a new fourth data structure. (See Abstract, col. 1, lines 9-18, and col. 7, lines 29-36.)

As noted above, claim 1 of the present application recites **selecting** a displayed structural unit of the reference message, selecting a displayed structural unit of the end-system message, and **determining deviations** of the selected structural unit of the end-system message by comparison with the selected structural unit of the reference message, **after the respective selections of the respective structural units**. Thus, in the claimed invention, the displayed structural units are selected **before** the determining of deviations therebetween is carried out. The determining of deviation of the selected structural units is expressly performed **after** the respective selections are performed. (See, e.g., page 11, lines 11-16 of the specification and use

of the term “then”). To the contrary, *Birsan et al.* describes a comparison of **an entire base file** with **an entire modified file**, and the merge of a third file out of the base file and the modified file **before any selection** of elements is carried out, while a **selection of** elements of any file (the merged file) only occurs after the comparison has been carried out. (See, e.g., column 8, lines 53-62, of *Birsan et al.* and the use of the terms “then”). The generation of the differencing tree is necessarily based on a comparison of the entire messages. Otherwise, the differencing tree could not be determined. In sum, *Birsan et al.* does not disclose any comparison only of selected units **after** their selection. In addition, no hint is given to change the order of comparison and selection. The Applicants submit that column 1, lines 33-37, is to be viewed in light of column 4, lines 61-67, column 5, lines 51-56, column 6, lines 48-52, and column 8, lines 58-62. Also, column 7, lines 29-30, is not at all equivalent to selecting structural units of messages, since again complete files are selected. Therefore, *Birsan et al.* does not disclose or suggest all of the limitations recited in amended independent claim 1.

Furthermore, *Tuma et al.* fails to supplement the above noted deficiencies in the teachings of *Birsan et al.*

Tuma et al. describes an OSI reference model and messages; however, it does not discuss the selection of structural units prior to determining deviations of the selected structural units. *Tuma et al.* clearly does not disclose **determining deviations** of the selected structural unit of the end-system message by comparison with the selected structural unit of the reference message, **after the respective selections of the respective structural units**, as recited in claim 1. Nor does *Tuma et al.* provide any teaching or suggestion of a reason for modifying the teaching in *Birsan et al.* in a manner such that the order of the determining of deviation and selection of messaging parts should be changed to arrive at the claimed invention.

In contrast to the applied art, the present invention advantageously allows for the selection of structural units, thereby allowing focusing on relevant structural units. This enhances user friendliness, since the user can thereby select only structural units that are actually compared, thereby redundant information processing can be avoided and, with this, undue waste of computing resources and time can be avoided.

Accordingly, the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the limitations recited in independent claim 1 of the present application. Thus, the Applicants respectfully request the withdrawal of the obviousness rejection of independent claim 1.

Claims 2-9 and 12 are considered allowable for the reasons advanced for independent claim 1 from which they depend. These claims are further considered allowable as they recite other features of the invention that are neither disclosed nor suggested by the applied references when those features are considered within the context of independent claim 1.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9957 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,
DITTHAVONG MORI & STEINER, P.C.

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Date

/Christopher D. Ward/
Christopher D. Ward
Attorney/Agent for Applicant(s)
Reg. No. 41,367

Phouphanomketh Ditthavong
Attorney/Agent for Applicant(s)
Reg. No. 44,658

918 Prince Street
Alexandria, VA 22314
Tel. (703) 519-9957
Fax (703) 519-9958